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### Minnesota Evictions: Where Do We Go from Here

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MINNESOTA EVICTIONS: WHERE DO WE GO FROM HERE

*Brooke Bednarczyk*

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I. INTRODUCTION

Eviction is “a summary court proceeding to remove a tenant or occupant from or otherwise recover possession of real property by the process of law.”<sup>1</sup> Minnesota eviction law is governed by Minnesota Statutes Chapter 504B which was adopted in 1999. Specifically, Chapter 504B.281 through 504B.371 deal with the eviction process, the execution process, and the appeals process.<sup>2</sup> Chapter 504B encompasses statutes related to the landlord-tenant relationship from the commencement of the tenancy through its termination. There are regulations for lease agreements, rights of the parties, how to seek redress, and more.

This essay will discuss the sources of law governing the residential landlord-tenant relationship related to eviction. It begins with a summary of the Minnesota statutes that address the rights and responsibilities in a landlord-tenant relationship. Next, it will discuss the eviction process including proper service requirements, what typically occurs at an initial appearance, and the options that tenants have once an eviction is filed against them. It will end with a discussion of the systems that are currently in place to assist tenants, the flaws in those systems, and possible solutions moving forward.

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1. MINN. STAT. § 504B.001, subdiv. 4 (2019).

2. *Id.* §§ 504B.281–371.

## II. STATUTORY LAW

Minnesota law provides legal avenues for landlords and tenants to resolve their landlord-tenant issues with the court's help. Minnesota Statutes Chapter 504B encompasses the statutory framework for landlord-tenant law in Minnesota. A landlord renting out a residential building with twelve or more units must have a written lease with the tenant.<sup>3</sup> A copy of the written lease must be given to the tenant.<sup>4</sup>

During the tenancy, the landlord and tenant both have covenants to abide by. The landlord is responsible for providing a premises and commons area that is fit for the intended use, keeping reasonable repair, and maintaining the premises in compliance with all health and safety laws and regulations.<sup>5</sup> The tenants, in return, must abide by their lease agreements, not maliciously destroy the premises, and notify the landlord of necessary repairs and maintenance.<sup>6</sup>

Additionally, Chapter 504B provides many protections to residential tenants in Minnesota. Residential tenants are afforded the right to seek police and emergency assistance with no lease consequence, to terminate their lease agreement if they are victims of violence, and to privacy.<sup>7</sup> A tenant may call for police assistance without fear of being issued a lease violation.<sup>8</sup> Furthermore, if a tenant is a victim of domestic violence, he or she is able to terminate his or her lease agreement without penalty.<sup>9</sup> Arguably, the most important right a tenant has is his or her right to privacy. A landlord may only enter a tenant's residence for a reasonable business purpose, and after making a good faith effort to give the tenant reasonable notice.<sup>10</sup> If the landlord violates the tenant's privacy, the landlord can be charged up to \$100 for the violation.<sup>11</sup>

When conflicts arise between a landlord and a tenant, the law affords avenues to address those issues. If a tenant believes the property is not in proper repair or up to code, he or she can bring a rent escrow action seeking assistance from the court in getting the necessary repairs completed.<sup>12</sup> If the tenant has failed to pay rent, breached the lease agreement, or failed to vacate the property when he or she was supposed to, the courts created the eviction statutes as

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3. *Id.* § 504B.111.
  4. *Id.* § 504B.115, subdiv. 1.
  5. *Id.* § 504B.161.
  6. *Id.* § 504B.165.
  7. *Id.* §§ 504B.205, 206, 211.
  8. *Id.* § 504B.205.
  9. *Id.* § 504B.206, subdiv. 1(a).
  10. *Id.* § 504B.211.
  11. *Id.*
  12. *Id.* § 504B.385.

redress.<sup>13</sup> An eviction action is a summary proceeding, created by statute, to allow the landlord or owner of rental property to evict the tenant or possessor of the property.<sup>14</sup>

In an eviction action, the landlord files a complaint with the court in the county where the residential property is located.<sup>15</sup> Once the complaint is filed, the action shows up as an Unlawful Detainer (“UD”) on the tenant’s record.<sup>16</sup> “Unlawful detainer is a civil proceeding, and the only issue for determination is whether the facts alleged in the complaint are true.”<sup>17</sup> The tenant must be served a copy of the summons and complaint at least seven days before the initial eviction hearing.<sup>18</sup> Minnesota is tied for the ninth fastest in the nation for how quickly the entire eviction proceedings occur.<sup>19</sup> For service to be proper, there must be two attempts of personal service on different days, one attempt being between 6:00 p.m. and 10:00 p.m.<sup>20</sup> After two attempts of personal service, service by posting and mailing is permitted.<sup>21</sup> The landlord/plaintiff or their attorney must ensure that the proper affidavits of service are filed.<sup>22</sup> Once the tenants are served, they must appear before the court on the day and at the place stated in the summons.

If the tenant fails to appear at the initial appearance, they are found in default and an order is issued for an immediate writ of recovery. The writ of recovery is a 24-hour eviction notice.<sup>23</sup> Once the tenant is served the writ of recovery, they have 24 hours to vacate the property. If they fail to vacate, the sheriff will come back to the property and perform a lockout and remove the tenant and their belongings from the property.<sup>24</sup> If the sheriff has to remove personal property out of the residence, the landlord must hold and store the

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13. *Id.* §§ 504B.281, 301.

14. *Id.* § 504B.001, subdiv. 4.

15. *Id.* § 504B.321, subdiv. 1.

16. Unlawful Detainer was the old term to describe an eviction action. However, at the time of filing the eviction action, the tenant’s background check, credit check, and rental history will show that an unlawful detainer was filed against the tenant. If the landlord and tenant settle the action, the Unlawful Detainer will stay on the tenant’s record until and unless the record is completely expunged.

17. *Minneapolis Cmty. Dev. Agency v. Smallwood*, 379 N.W.2d 554, 555 (Minn. Ct. App. 1985).

18. MINN. STAT. § 504B.331(a).

19. Michael Scott Davidson, *In the Past Five Years, Roughly Three-in-Ten Las Vegas Valley Renter Households Faced a Court-Ordered Eviction*, LAS VEGAS REV.-J. (last updated June 29, 2019, 3:50 PM), [www.reviewjournal.com/local/local-nevada/despise-changes-nevada-eviction-law-still-favors-landlords-1697301/](http://www.reviewjournal.com/local/local-nevada/despise-changes-nevada-eviction-law-still-favors-landlords-1697301/).

20. MINN. STAT. § 504B.331(a).

21. *Id.* at § 504B.331(d)(2).

22. *Id.*

23. *Id.* at § 504B.365.

24. *Id.*

property.<sup>25</sup> The tenant may get their property back by paying for all expenses related to removing the personal property and any storage expenses incurred.<sup>26</sup>

If the tenant appears for the initial appearance, the parties are asked to speak prior to the hearing and attempt to settle the matter. If there is a settlement, either written or oral, the settlement is presented to the judge or referee and it is adopted by the court. If the parties cannot reach a settlement, but there are no contested issues or defenses, the longest amount of time the court can give is seven days to either redeem<sup>27</sup> their tenancy or to vacate the property.<sup>28</sup> If there are any contested issues or defenses, the judge or referee will set the matter on for a contested hearing or trial. This trial has to be within six days, unless the timeline is waived by the parties.<sup>29</sup> If the case goes to contested hearing or trial based solely on non-payment of rent, the court may require a posting of the undisputed rent amount.<sup>30</sup>

In the Fourth and Second Judicial Districts, a housing court referee presides over the initial appearance, which could include as many as fifty cases scheduled for one calendar.<sup>31</sup> The housing court referees in Ramsey and Hennepin Counties hear between 6,000 and 8,000 of the 16,000 eviction cases filed statewide each year.<sup>32</sup> Due to the sheer volume of evictions in Ramsey and Hennepin Counties, those counties have services available for tenants to utilize on the day of the initial appearance. Present at court are representatives from Emergency Assistance and other agencies to possibly assist tenants financially to pay off some rent arrearages. Attorneys from Southern Minnesota Regional Legal Services (“SMRLS”) as well as Volunteer Lawyers Network (“VLN”) are also available for tenants who wish to sign up and receive free legal advice. In addition to these resources, there are volunteer mediators who are available to mediate between two consenting parties. All of these services are provided to assist tenants in navigating the eviction process and keep them in their homes.

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25. *Id.*

26. *Id.*

27. “Redeem their tenancy” means to pay the total amount of rent in arrears, with interest, costs of the action, and an attorney’s fee not to exceed \$5 pursuant to Minn. Stat. § 504B.291, subdiv. 1, and stay in the property for the remainder of the lease agreement.

28. MINN. STAT. § 504B.345, subdiv. 1(d).

29. *Id.* at § 504B.341(a).

30. *Id.* at § 504B.161; MINN. GEN. R. PRAC. 608; Fritz v. Warthen, 213 N.W.2d 339, 343 (1973).

31. MINN. GEN. R. PRAC. 602 (2019).

32. Samuel Spaid & Zoe Thiel, *Evictions in Greater Minnesota*, HOMELINE (May 2018), <https://homelinemn.org/wp-content/uploads/2018/06/Evictions-in-Greater-Minnesota-Report-with-Appendix.pdf>.

### III. EDUCATING TENANTS IN AN EVICTION ACTION LEVELS THE PLAYING FIELD

The most important thing that a tenant needs going into an eviction hearing is education. Education is key. It is very important that tenants are given the tools they need to fully participate in the eviction process. It is unrealistic to expect that a tenant fully understands the landlord-tenant relationship and the eviction process. When tenants enter the relationship with their landlord, they often do not consider that problems such as repairs or inability to pay rent may occur. When those things do happen, tenants may not be sure what to do or how to resolve the situation. That is why educating the tenants on their rights, responsibilities, and eviction laws is vital.

The first way tenants are informed of the duties and responsibilities of a landlord and tenant relationship is via their lease agreement. A lease agreement is a contract and is given the full effect and protections of any other contract.<sup>33</sup> It is the tenant's responsibility to read the lease agreement prior to signing it and asking any questions that they may have.<sup>34</sup> The lease is full of valuable information and includes sections on the rights and responsibilities of both the landlord and the tenant. Unfortunately, in most cases, tenants are not taking full advantage of this first chance at education by reading the lease agreement and asking those questions.

The tenant's second chance for education comes when they receive their Summons and Eviction Complaint. In most, if not all counties, the Summons includes a list of services and resources available to them to educate them on the eviction process and possibly to provide representation or financial assistance. It is the tenant's responsibility to read the Summons and take the initiative to reach out and utilize those resources prior to court.

Lastly, in Hennepin, Olmsted, and Ramsey County, there are resources available the day of court. This gives the tenants one last opportunity to educate themselves on the process prior to their eviction hearing. Tenants are given the opportunity to apply for a legal aid attorney, free mediation services, and/or financial assistance from an organization.

These opportunities for education are optional, but sometimes it does not seem that way. The resources available are great, but also

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33. *Minneapolis Pub. Hous. Auth. v. Lor*, 591 N.W.2d 700, 704 (Minn. 1999) (“[A] lease is a form of contract. Unambiguous contract language must be given its plain and ordinary meaning, and shall be enforced by courts even if the result is harsh.”).

34. *Lease Servicing Ctr., Inc. v. Thomas*, A09–0240, 2009 Minn. App. Unpub. LEXIS 1080, at \*1, \*25 (Minn. Ct. App. Sept. 22, 2009).

have their drawbacks. In Hennepin, Olmsted, and Ramsey County, there is a “check-in person” walking around getting tenants signed up to talk to legal aid. This is the first point of controversy the day of court. As tenants walk into the waiting area prior to their court hearing, they are bombarded by people with clipboards asking them if they are tenants and if they are looking for free legal advice. For most people, their eviction hearing is the first court appearance they have ever had to make and the last thing they need is to be jumped on as soon as they walk in. There is a speech given in the court rooms regarding signing up for legal aid, which would be sufficient. The tenants that are seeking legal help fill out a form and wait their turn, which can take more than an hour depending on the order the tenant signed up. Those tenants that decline the help, are often asked multiple more times throughout their court experience if they would like to seek legal help. This constant idea that the tenants should not talk to the landlords or their attorneys without first talking to legal aid gives the impression that the landlord is the “bad guy” and cannot be trusted. This adds more contention to an already emotional conversation.

It is great that there are services available for tenants to get education and “level the playing field,” but the current systems enforce an “us versus them” mentality. It can also make the whole process more hostile and time intensive in the long run. The current eviction system is highly criticized as being unfair to tenants. However, landlords need some avenues of redress for nonpayment of rent, breaches of the lease, and holdover tenants. That solution is eviction hearings. A majority of landlords use eviction action as the last-ditch effort to claim what is due to them under the lease agreement. In many cases, landlords have attempted to reach out and work out agreements outside of court with the tenants. When the tenants are unresponsive, or do not follow through with previous repayment agreements, the landlord has no option other than to file an eviction.

In a perfect world, the tenants would show up to court with the money that is owed and be able to pay and stay, or redeem their tenancy, and a settlement would be entered. Realistically, that is not often the case. Tenants have life situations—job loss, miss time at work, death in the family, etc.—that result in lack of funds to pay rent. In addition to paying the past due rent and late fees, tenants are required to pay the costs associated with filing the eviction action.<sup>35</sup> Those costs include the filing fee, service fees, and the statutory maximum of \$5.00 in attorneys’ fees.<sup>36</sup> Those costs can range from \$350–\$500 and can be the difference between a tenant redeeming their tenancy and ultimately having to move out.

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35. MINN. STAT. § 504B.291, subdiv. 1(a) (2019).

36. *Id.*

The judges and referees have worked hard to put the current systems into place. They continue to review and work to revise and update the systems by using the input of representatives on both the landlord and tenant side of the dispute. The systems in place now are better than they used to be, but more improvement is possible.

#### IV. POSSIBLE SOLUTIONS GOING FORWARD

Homelessness is an issue in Minnesota and has increased in recent years.<sup>37</sup> Looking towards the future of eviction law in Minnesota, possible considerations for changes could be lowering the filing fees, mandatory mediation prior to filing, and change the process so unlawful detainers do not show up on background checks until a writ of recovery is issued. Each of the options are discussed below, including obstacles and pushback that the options may receive.

The first possible change for the future of Minnesota evictions is lowering the filing fees. In most nonpayment of rent cases, by adding on the additional costs of the action it makes it next to impossible for the tenants to redeem. If the tenants are not able to redeem their tenancy, the only other option is to vacate the property, typically within seven days. With an unlawful detainer being on their record at the time the action is filed, it also makes it very difficult for the tenant to find new housing elsewhere. If they have nowhere else to go, the tenants are left with the option of trying to find a shelter or becoming homeless.

Another possible solution moving forward is to lower court costs and reduce that obstacle for tenants the day of court. Lowering court costs would likely make it possible for more tenants to redeem their tenancy and stay at the property, therefore, making the homelessness issue less inevitable. However, if court costs are lowered, it may incentivize landlords to file more quickly because there is less of an immediate cost to them. This may be a reason that the court costs are as high as they are now. Implementing the lower court costs would require weighing the pros and cons for both tenants and landlords across the state.

The second option for change in the Minnesota eviction process is to require mandatory mediation prior to filing eviction actions. Mediation is the intervention in a dispute in order to reach a mutually agreeable solution.<sup>38</sup> There are many mediation services available at housing courts throughout Minnesota. One of the biggest mediation services is through Community Mediation and

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37. *Homelessness in Minnesota*, WILDER RES. (Mar. 21, 2019), <http://mnhomeless.org/minnesota-homeless-study/homelessness-in-minnesota.php>.

38. *Mediation*, BLACK'S LAW DICTIONARY (11th ed. 2019).



Restorative Services (“CMRS”) whose mission is “[t]o develop the capacity of the community to respectfully resolve conflict and repair harm.”<sup>39</sup> CMRS offers services to landlords and tenants to assist them in respectful conversations resulting in agreements that work for all parties.<sup>40</sup>

If legislation made it mandatory to attempt mediation prior to filing an eviction action, it would likely cut down on the number of evictions filed. Some landlords do try to discuss the matter with tenants before filing. However, if mediation was mandatory, it would force these settlement discussions to happen before any additional fees incurred. This option could easily be implemented by requiring the landlord or his or her attorney to file an affidavit stating that mediation was attempted prior to filing. This affidavit would be attached with the Complaint and the court would not accept the filing without it.

One caveat with the affidavit could be that as long as the landlord made good faith attempts to mediate with the tenant, it would suffice. Landlords may not approve of this option because it puts more work on the landlord for something, that in theory, is entirely the tenants’ fault. Landlords will likely not want to go out of their way to try and force a tenant to mediate prior to an eviction being filed. Therefore, as long as the landlord attempted to contact the tenant and to mediate the situation prior to filing, he or she would be in compliance. Unfortunately, this might lead to similar problems that Minnesota currently faces, in that some tenants will not do their part in reaching out to or following through with mediation with the landlord. Tenants could also avoid mediation services in the hope that an eviction could not be filed.

The final solution for the future of evictions in Minnesota is: only have the eviction appear on the tenant’s record if judgment is entered and a writ of recovery is issued. Once an eviction is filed, it appears as an Unlawful Detainer “UD” on the tenant’s record. That UD designation stays on the tenant’s record no matter the outcome of the case. The tenant could redeem his or her tenancy prior to court, the case could get dismissed, or the case could have even been filed in error, but the UD will be on the tenant’s record. In order for the UD to be removed from the tenant’s record, the parties can either agree to an expungement as part of their settlement, or the tenant must go back to court and make a motion for expungement.

With a UD on their record, tenants find it difficult to rent in the future. This is especially problematic when a tenant is being evicted and does not have the money to redeem his or her tenancy. The result is often that the tenant will be out on the streets. Tenants are

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39. *About*, COMMUNITY MEDIATION & RESTORATIVE SERVICES, INC., <https://cmrsmn.org/about/> (last visited Jan. 9, 2019).

40. *Id.* at *Services*.

stuck between a rock and a hard place when they are not able to pay their landlord in order to remain at the property and they cannot rent from a different place because of the UD on their record. A tenant is not “guilty” until judgment is entered, and the writ of recovery is issued. However, allowing the UD to be on a tenant’s record at the time of filing immediately affects the tenant negatively.

It would be beneficial to public policy if the eviction only appears on a background check if judgment was actually entered against the tenant. That way, the tenant is only affected if he or she fails to comply with the settlement agreement, the court order, or fails to appear and is in default. The rationale behind the current system is that future landlords have a right to know if, when, and how many evictions have been filed against someone applying to rent from them. Landlords may have a right to know that information. However, tenants gaining a UD on their record, no matter the outcome, likely does more harm than good.

## V. CONCLUSION

The Minnesota eviction process has been noted as one of the fastest in the country. It is often criticized as being unfair to tenants. The time between filing the action to the initial hearing date can be as quick as two-weeks. The Minnesota court systems do work hard to ensure that in that short timeframe tenants are pointed to as many resources as possible. It is important that tenants become educated on the eviction process and the applicable eviction laws so they can effectively participate in their eviction proceedings. The current system in place provides for a combative, unorganized process that may not accomplish all of the goals that it set out to accomplish. The legislature, judges, and referees are continuously working to update and improve the current system. There is no one-size-fits-all solution suggested at this time. However, it is a hopeful, positive goal that all parties in the eviction process can work together to come to a solution regarding evictions in Minnesota.